

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RHODE-NYC, LLC,	:	
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Plaintiff,	:	22-CV-5185 (LGS) (SLC)
vs.	:	
	:	<b>DECLARATION OF</b>
RHODEDEODATO CORP., et al.,	:	<b><u>CLAUDIA ALLWOOD</u></b>
	:	
Defendants.	:	
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I, CLAUDIA ALLWOOD, declare as follows:

1. I am the Chief Marketing Officer for Defendant HRBeauty LLC d/b/a Rhode. I submit this Declaration in opposition to the motion by Plaintiff Rhode-NYC, LLC (“Plaintiff”) for a preliminary injunction. I have personal knowledge of the matters stated herein except to those matters as to which I show the basis of my belief.

2. Rhode Skin launched on June 15, 2022 with three signature products – Peptide Glazing Serum (\$29), Barrier Restore Cream (\$29), and Peptide Lip Treatment (\$16). By the end of the day on June 15, we had almost entirely sold out. As detailed below, the successful launch was due to significant work in the several months leading up to the launch date.

3. The overwhelming majority of investment in our brand occurred *after* April 28, 2021, but before we received Plaintiff’s cease and desist letter on June 13, 2022. Work before this period included a branding agency working on developing the logo and creating draft presentations to describe aspirational aspects of the brand identity. This process was not even finished as of the end of April 2021, however. The brand identity was still being worked out at that time. And all other significant work to prepare the brand for launch still lay ahead.

4. Below I describe such work that occurred after April 28, 2021, and the associated costs. Not everything is listed below; for instance, I do not include the cost of signage or other branding at our Rhode Skin office, and there are other costs not included.

5. I also describe below estimates of what it would cost to redo such work as needed in the event that the preliminary injunction is granted and we need to rebrand. These estimates are based on our current judgment. They are conservative in the sense that they do not account for inflation or increases in the standard rates of professionals we hire to do much of this work. These estimates of what rebranding would cost us are set in **red font** below, to distinguish them visually from actual costs already incurred, which are in **blue font**.

#### **BRANDING & DIGITAL MARKETING ASSETS**

6. A branding agency worked for two years starting in February of 2020, to develop the comprehensive brand identity (logos, brand guidelines, packaging concepts, visuals concept, creative direction, etc.). Work occurring after April 2021 included creating a strategy presentation setting out the relevant consumer landscape and the positioning of the brand (mission, values) and finalizing the color palette, basic packaging design, and other visual details. We would need to repeat this work from scratch. Given the high-profile nature of the brand we would need to overhaul and reinvent it.

7. We held six separate brand shoots, each of which featured the RHODE mark, to create marketing assets.

8. For our first brand shoot, we worked with fashion designer and creative director Eli Russell Linnetz to create branded content for launch. Oversized packaging models featuring the RHODE mark were custom-made for the shoot. Including pre- and post-production work, this shoot took three months. We would need to redo this shoot entirely if we had to rebrand.

9. Our second brand shoot focused on producing images and videos of our products on skin. Product packaging featuring the RHODE mark was captured in this content. Including pre- and post-production, the shoot took five months. If forced to rebrand, this shoot would need to be almost entirely redone.

10. Our third brand shoot focused on images and videos of product application and other skincare images, primarily for the website. Product packaging featuring the RHODE mark was prominent throughout this shoot. Including pre- and post-production, this shoot took 1.5 months. In the event of a rebrand, this content would become unusable.

11. The focus of our fourth brand shoot was product photography, featuring our branded product packaging. Including pre- and post-production, this shoot took 1.5 months. If we had to rebrand, we would need to reshoot every single product component for the website, including new art direction, product styling, and production.

12. The purpose of the fifth brand shoot was to obtain stills and video of the product packaging and dispensing. All of the content prominently features our RHODE-branded packaging, often in close-ups. Including pre- and post-production, this shoot took 1.5 months. In the event of a rebrand, product components would need to be entirely reshot.

13. For our sixth brand shoot we worked with an Instagram content creator to create product-focused video content. This took six weeks.

14. We had three-dimensional models of branded packaging created for use at multiple of our shoots, which would need to be remade with a new mark to recreate that content.

15. We engaged freelancers for two months to make additional collateral, emails, social media content, templates, GIFs of packaging, and billboard content. If we had to rebrand, we would need to work with designers to recreate the entire brand aesthetic, and we would need to

invest more in reintroducing the brand to rebuild it, requiring even more of these marketing assets.

16. We created a customer-care associate brand bible and training guide, which includes information about the brand aesthetic and design. This took two months to create and would need to be significantly edited to accommodate a rebrand.

17. We developed videos for Hailey Rhode Bieber's YouTube channel featuring Rhode Skin, including with celebrity guests. We also created a documentary about the making of Rhode for later promotional purposes. If we had to rebrand, we would be unable to recreate many of these videos due to the celebrity profile of the guests, including Gwyneth Paltrow, Emily Ratajkowski, Keke Palmer, and Jen Atkin. We also would be unable to recreate a "first impressions" video with top skincare creator, Hiram Yarbo, or a video filmed at the Met Gala in May 2022. Not only would the loss of all of this valuable video content hurt the brand, it would also hurt the health of Hailey's YouTube channel and our partner relationships, including with the guests in the videos and with YouTube. Recreating the two-year documentary would be difficult to do for a rebrand and would result in loss of the brand's storytelling and authenticity of the brand's origins.

18. Costs for all of the above work incurred after April 28, 2021, totaled at least [REDACTED].<sup>1</sup> We estimate that to recreate such content for a new brand, it would cost at least [REDACTED]. The increase is in part due to certain first-time discounts that we would not receive again.

19. We engaged a vendor to develop the user interface and design of rhodeskin.com, and we registered that domain and others for our website. We also paid for an ADA compliance audit of our site, and engaged a vendor for online search-related marketing work. In the event of

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<sup>1</sup> This does not even include work with the branding agency in paragraph 6 that occurred after April 28, 2021, although some portion of that expense would have fallen after that date.

a rebrand, we would need to make significant revisions to the user interface and design of the website, undergo another ADA compliance audit, and redo the search-related work.

20. For four months, we engaged freelance copywriters to create brand taglines and copy for our website and social media. Much of this copy includes word play on the word “rhode,” and so it would need to be redone if we are forced to rebrand, requiring us to repeat much of this work to recreate the editorial nature of the copy and adapt our language to the new brand concept.

21. Our website-related costs described in paragraphs 19-20 were at least [REDACTED]. If forced to rebrand, we estimate it would cost at least [REDACTED] to revise or redo such work, not including the costs of acquiring new domains under the new brand name.

22. In April of 2022, we signed a contract for a billboard in a highly visible, key location on Sunset Boulevard in Los Angeles to announce the brand launch, at a cost of [REDACTED]. If we needed to relaunch under a new name, we would need to re-educate to drive consideration of the new brand without the benefit of a lot of the earned media we received from the initial launch. Out-of-home (OOH) advertising like billboards would be an important part of this, and we would need to expand into more than one territory and have more placements for smaller media types. For these reasons, we estimate that OOH advertising would cost us at least [REDACTED] in the event of a rebrand.

23. There are other branding-related costs that would also be wasted if we had to rebrand. For instance, we own a creative concept for a future pop-up store that is closely anchored to the RHODE brand creative, which would be unusable if the brand changed directions. Our investment in the pop-up concept is [REDACTED], and because the RHODE branding is so prominent throughout, it would need to be entirely redone, at an estimated cost of [REDACTED].

24. In addition, the cost to file and register new trademark applications in the U.S. and

other key countries for the new mark would be an estimated [REDACTED].

### PACKAGING

25. During late 2021 and early 2022, we finalized and manufactured the primary and secondary packaging for our first product releases, which – of course – feature RHODE prominently.

26. We engaged a graphic design agency, which spent around eight months developing our packaging design. (This is in addition to time devoted to initial packaging designs by the branding agency we engaged to create the entire brand identity, *see* paragraph 6 above.) We also engaged two packaging consultants who worked on the packaging pre-launch.

27. We also created RHODE-branded shippers to ship our product to consumers. These took six months to develop and manufacture.

28. The total cost of developing and creating our packaging was at least [REDACTED]. Should we need to develop and manufacture new packaging featuring a new brand, it would cost at minimum the same, or [REDACTED].

### INVENTORY

29. Around late 2021 and early 2022, we ordered all branded-inventory needed for launch and shipped it to our distribution centers in April and May of 2022. This cost approximately [REDACTED].

30. We currently have in inventory, or have placed orders (and are obligated to pay) for approximately [REDACTED] additional units of product across all SKUs. If an injunction issues, depending on when it issues, a substantial portion of this of inventory may become unsellable.

31. The need to responsibly dispose of so much unsellable product would be extremely wasteful. It would be harmful to the sustainability promise Rhode has made, hurting our goodwill

among our customers. Rebranding could also affect or delay our application to register as a certified B-corporation.

32. If we needed to reorder inventory for launch under a new brand, it would cost at least as much as it did the first time we launched, or [REDACTED].

33. Additional inventory-related costs not included above include those associated with regulatory approvals, testing, and warehouse costs. I have not factored these in here as they are difficult to estimate in the event of rebranding.

### **LAUNCH DAY EVENTS**

34. We planned our launch-day events for months in advance.

35. We co-hosted a launch party with a key channel partner for more than 200 attendees. It took three months to plan. This was a massive component of creating the brand's visual identity. We generated significant branding content at the event, which would be unusable if we needed to rebrand.

36. We created 1,000 VIP boxes and bags with our product lines to send to influencers, celebrities, and media. These took six months to create. They resulted in substantial earned media coverage that was highly celebratory for the launch, which we would not expect to occur again at the same level and tone, even if we re-sent rebranded VIP gifts. If we needed to generate coverage of a new brand, we would need to include more recipients than we did the first time, and invest in a high-touch brand experience in order to retain consideration and coverage of the brand.

37. At a suite at 1 Hotel in Brooklyn, New York, we hosted editorial desksides that Hailey attended. This event took one month to plan.

38. We spent two months coordinating Hailey's media appearances for launch day, including locking in dates and planning travel, etc. These appearances were strategically

negotiated and timed. They included appearances on *The Tonight Show with Jimmy Fallon*, *Live with Kelly and Ryan*, *The Kelly Clarkson Show*, and *Good Morning America*. Our product packaging was shown on-air and in some of the shows' websites and YouTube content. While this publicity is invaluable in a sense, we estimated that the value of it in terms of the cost to obtain equal media exposure through ad time would be around [REDACTED]. These appearances would be irreplaceable for a rebrand, as we secured them strictly because of the newness and excitement around our launch.

39. By June 13, 2022, we had incurred all of the costs associated with the above launch events: we had either paid for them or had incurred the obligation to pay for them. These costs exceeded [REDACTED] (not including travel costs). If the injunction issues and we need to launch a under a new brand, our estimated launch day costs would be a minimum of [REDACTED].

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40. The major costs incurred between April 28, 2021 and June 13, 2022, or all of the amounts in blue above, were at least [REDACTED]. Should we need to rebrand, the total cost to do so would be at least [REDACTED], or all of the amounts in red above. This does not even include the cost of running the business during the rebranding process, which would be significant.

### **OTHER EFFORTS & IMPACTS**

41. As a result of our efforts described above, many publications covered our launch with articles on June 15, including *Allure*, *Byrdie*, *Bustle*, *Cosmopolitan*, *ELLE*, *Forbes*, *Glamour*, *Harper's Bazaar*, *InStyle*, *NYLON*, *Page Six*, *People*, *POPSUGAR*, *Seventeen*, *Vanity Fair*, *Vogue*, *Self*, and others. We spent months of advance work with some of these publications. For *Byrdie*, we had a launch-day website "takeover," profile story, three individual product reviews, a feature on Hailey's skincare routine, and other social and video content. In advance of the launch, we had



coverage on the covers of *Allure* and *The Wall Street Journal*. Because media outlets require newness and new stories (not rebranding / relaunches) in order to cover with the same tone and depth, or to provide the same placement, we would not be able to replicate this coverage.

42. We also attracted substantial celebrity organic social media coverage of our launch. Many people were thrilled to finally celebrate Hailey's launch, including her circle of celebrity friends and talent. We would risk being unable to generate equal excitement for a relaunch, as this inaugural launch has been so heavily anticipated and teased. This is coverage that we would likely be unable to duplicate or regain.

43. To date, we have not run paid advertising on social media. If forced to rebrand, we would have to invest significantly in advertising to educate consumers about the change in the brand, and this would mean a sizable paid media campaign in social. These costs have not been quantified, but we anticipate that they would be significant given the broad reach of the organic media from the launch that we would have to course-correct.

44. In addition, we submitted our products for beauty awards which will be announced this year. It is our desire to license the awards or seals for marketing. Once awarded, the licensing is strict and cannot be transferred – this would gravely impact our potential sales as we would be unable to leverage top industry accolades for on-packaging marketing, in-retail or on-digital marketing. We would also be unable to resubmit our products for consideration as the formula would have already been awarded. This would truly harm our potential consumer consideration in-store, digital sales conversion, and more.

45. Our cruelty-free certification from both PETA and Leaping Bunny took six months of effort to obtain. To the best of my knowledge, a change in packaging or branding would require reregistration, so we would need to repeat that process.

46. Other assets would also likely be lost in the event of a rebrand. It is unlikely we would be able to use the 500+ product reviews and ratings received thus far in the event of a brand name change. This kind of marketing drives conversion. Its loss would also limit transparency and the availability of consumer information on our product performance, even without a formulary change. The loss of this kind of user-generated content would also impact our reach in organic social media.

47. Rhode Skin has an associated philanthropic effort called Rhode Futures Foundation. The philanthropic mission is based on providing a “rhode” for women’s futures. Rebranding this foundation would create another copy and creative workstream needed to make new content and reposition that entity.

48. If the preliminary injunction is granted, our product would be off the market during rebranding. We estimate that it would take a minimum of ten months to relaunch under a new brand. The estimated lost revenues during this period are [REDACTED], according to an analysis by our investors.

49. Our brand and positioning is highly distinct from Plaintiff’s. Our products are available only through rhodeskin.com. The philosophy of our brand focuses on minimalism and sustainability, and it is also closely tied to Hailey. Our price point is very different – under \$30 a product. We target a younger customer. Everything about our brand is focused on skincare and skincare ingredients.

50. Our advertising is also very different. It features close-ups of faces or product, with images closely-cropped. There is little clothing shown in our advertising because of the tight focus on faces or product.

51. We have been actively using our @rhode Instagram account since June 8, 2022,

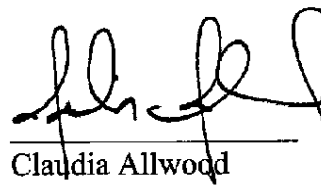
when we published our first post. On our end, we have not seen any incidents to date where a user has mistagged our products as Plaintiff's.

52. Our target customer base is Gen-Z, or people in their teens and 20s, which is the age of many of Hailey's fans. Our products are priced to be affordable to that age group and are marketed to appeal to them. Although our products are affordably priced, our customers exercise a great deal of care in choosing skincare, especially as our products are for the face and lips. They are passionate, interested, well-educated, and savvy. Our digital experience at rhodeskin.com caters to that, offering a lot of robust information and education squarely focused on skincare and ingredients.

53. Nearly all of our advertising features Hailey, and it would be highly difficult to find a new name as appropriate for this brand as Rhode.

54. I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2022



Claudia Allwood